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14 JAN 1980

NOTE FOR: Deputy Director for Administration

AT

FROM: [REDACTED]

Deputy Director of Logistics

SUBJECT: Contracting with Small Disadvantaged Business Concerns

Don:

1. In response to your request that we provide you a summary of where we are with regard to the program of aid to minority contractors, attached hereto is a paper which pretty much details the aspects of the so-called "8a Program" which gives us problems. The key document which sets forth our basic concerns with the program is the letter dated 17 May 1979 to the Acting Administrator of OFPP signed by the DDCI (Reference (b)).

2. In addition to the drive to increase the number of contracts awarded directly to minority contractors, the latest amendment to the Small Business Act placed additional emphasis on subcontracting with minority contractors. This part of the program has been receiving a lot of publicity lately because Federal agencies are having a hard time implementing its requirements.

3. Basically, only SBA has the right to enter into sole source contracts with minority contractors. Our contract information system indicates that since 1976 we have issued a total of seven contracts with three companies which certified they were owned by minorities. We are attempting to identify other firms which can be considered for award. Even if we are successful, we are still faced with a problem in awarding them a contract. We cannot justify issuing a contract on a sole source basis merely because the firm qualifies as being minority-owned. So, we are on the horns of a dilemma.

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4. We are planning on going forward with the subcontracting part of the Public Law 93-507, but we will be careful to exclude the language in the implementing clauses which provide for SBA review of the success or failure of the prime contractor's subcontracting plan.

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SUBJECT: Contracting with Small Disadvantaged Business Concerns

which may exceed \$500,000 if the contract is to be negotiated. Before award of a contract which is to be negotiated, and for more than \$500,000, and which offers "subcontracting possibilities," the contractor shall negotiate a subcontracting plan. The plan is to be part of the contract. The procuring agency must positively find the subcontract plan offers the "maximum" practicable opportunity for the small business and "disadvantaged" small business to participate. IWB's are treated similarly, except the subcontract plan is not negotiable. An inadequate plan would apparently make the low bidder ineligible for award. The plans should have "goals" (for each type of small business), the name of the subcontract administrator, a description of his duties and the efforts he will take, and assurances that the prime will pass on the requirements to lower tier contractors, will keep record of his efforts, and will submit reports to the Agency and the SBA as required by either of them. Breach of the plan is a breach of the contract.

(2) Section 221 of the Act describes a requirement to set goals for the issuance of prime contracts larger than \$10,000 to small and disadvantaged businesses. These would be jointly set by SBA and the Agency and refereed by OFPP in the event of a dispute. At year end, the Agency would report its accomplishments in meeting its quota with "appropriate justification for failure." These will be reported back to Congress. Section 221 also "establishes" in each agency an office of "Small and Disadvantaged Business Utilization," who will be appointed by the agency head, report and be responsible only to the agency head or his deputy, be responsible for implementation of all agency functions under the SBA

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Act, and would supervise all personnel whose duties "relate" to functions and duties under the SDA Act.

3. OFPP Policy Letter No. 79-1 (Reference (a)) was issued to implement certain provisions of Public Law 95-507. The Reference (b) response to OFPP's policy letter sets forth the basic reasons the Central Intelligence Agency cannot implement these portions of Public Law 95-507. Reference (c) was another policy letter from OFPP on the same subject. In Reference (d), the Director of Logistics recommended to the DCI that we take no action with regard to the second OFPP policy letter.

4. The Reference (e) memorandum is the latest initiative from OFPP to enforce implementation of Section 211 of Public Law 95-507 which is concerned with subcontracting with small and small socially and economically disadvantaged firms under Federal prime contracts of \$500,000 or more (\$1,000,000 for construction). To date, we have not responded to this memorandum and are giving serious consideration to recommending that no response be made. We have prepared a draft procurement note that is being coordinated with procurement elements throughout the Agency which will require that the appropriate clauses be included in Agency solicitations and contracts. As the Reference (d) indicates, Public Law 95-507 is a complex and difficult law to implement. In addition to their other duties, Contracting Officers will now be charged with responsibility for determining what is an "acceptable" subcontracting plan with no substantive guidance as to what constitutes a plan which meets the requirements of the Public Law. As newspaper articles and our own communications with other Government agencies indicate, there is a notable lack of progress throughout the Federal Government in implementing the subcontracting program.

5. Summary.

a. Our primary concern with the Small Business and Small Disadvantaged Business Program is the oversight responsibilities of the Department of Commerce, the Small Business Administration, the Office of Federal Procurement Policy, and the

SUBJECT: Contracting with Small Disadvantaged Business Concerns

General Accounting Office. These organizations all have responsibilities and authorities which allow them to become deeply involved in the acquisition programs of Federal agencies.

b. The authority to enter into non-competitive procurements with small disadvantaged concerns is limited by law to the Small Business Administration under Section 8(a) of the Small Business Act (15 U.S.C. 637 (a)). The Small Business Administration funds any costs which are in excess of the estimated current fair market price anticipated under normal contracting procedures. Agencies contract directly with the SBA and not with the small disadvantaged concern, although the SBA may allow the procuring agency to negotiate the proposed subcontract schedule provisions with the 8(a) subcontractor.

c. If we implement the subcontracting provisions of Public Law 95-507, the required Defense Acquisition Regulation clauses will have to be amended to exclude any reference to the Small Business Administration as having priority to the Central Intelligence Agency's contracts.

Atts

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14 JAN 1980

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MEMORANDUM FOR: Deputy Director for Administration

FROM: [REDACTED]

Deputy Director of Logistics

SUBJECT:

Contracting with Small Disadvantaged
Business Concerns

REFERENCES:

- (a) OFPP Policy Letter 79-1,
dated 7 March 1979
- (b) Letter to Mr. Currie from DDCI,
dated 17 May 1979
- (c) OFPP Policy Letter 79-3,
dated 7 Sept 1979
- (d) Memo to DDCI from D/L,
dated 28 Sept 1979, subject:
Goal Setting
- (e) Memorandum to Heads of Departments
and Establishments, dated
21 Nov 1979, subject: Implementation
of Public Law 95-507

1. Action Requested: The purpose of this memorandum is to advise you of the current status of the Central Intelligence Agency's position with regard to contracting with small disadvantaged business concerns.

2. Background Information:

a. On 30 July 1953, Congress passed Public Law 163, Title II of which was designated The Small Business Act of 1953. On 13 July 1958, Title II of the Act of 1953, as amended, was enacted as separate legislation which was known as the Small Business Investment Act of 1958 (Public Law 85-536). Section 8(a) of the Small Business Act provided that the Small Business

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SUBJECT: Contracting with Small Disadvantaged Business Concerns

Administration (SBA) was authorized to enter into contracts with other Federal agencies and, in turn, to subcontract with commercial concerns for actual performance of the contract requirements.

b. On 5 March 1969, Executive Order 11458 entitled "Prescribing Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise" was issued by President Nixon. As a result of this directive, the "Section 8(a) Program" was undertaken for the purpose of assisting new or struggling minority-owned business concerns to achieve a viable competitive status. An Office of Business Development was established in the Small Business Administration to manage the "8(a) Program."

c. Executive Order 11625, dated 13 October 1971, entitled "National Program for Minority Business Enterprise," gave additional impetus to the "8(a) Program" by requiring Federal departments and agencies to develop comprehensive plans and specific program goals for the minority enterprise program, with the Secretary of Commerce designated as the focal point for coordinated review and implementation of these plans and programs.

d. In 1978, Congress enacted Public Law 95-507, which included a number of changes to the Small Business Investment Act of 1958. A summary of the more important provisions is as follows:

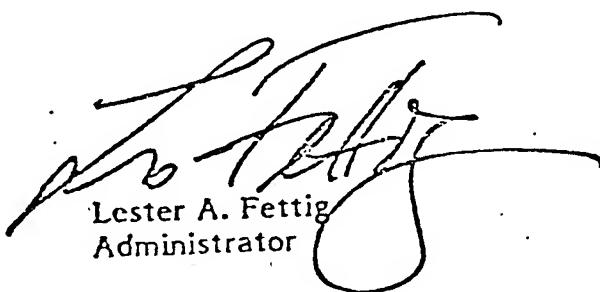
(1) Section 211 includes a mandatory clause for inclusion in all contracts for over \$10,000, which are not for personal services, provided the contract is not with a small business. It requires compliance with a policy of favoring small businesses, and small businesses controlled by "disadvantaged" individuals in any subcontracts placed under the contract. This clause is also required in any RFP for a contract

4. The position description of the Director should reflect the management role as well as other operational responsibilities. The position description should include, but not be limited to, the following items:

- o Items listed in Section 15(k):
 - .. Responsibility for the implementation and execution of the functions and duties under Sections 8 and 15 of the Small Business Act, as amended, which relate to the agency,
 - .. Assigning a small business technical adviser to each office to which the SBA has assigned a procurement center representative,
 - ... who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and
 - ... whose principal duty [shall be] to assist the SBA procurement center representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act, as amended, and
 - .. cooperate, and consult on a regular basis, with SBA with respect to carrying out the functions and duties of Sections 8 and 15 of the Small Business Act, as amended.
- o Developing systematic procedures for insuring the effective execution of the Small Business Act, as amended.
- o Recommending agency goals.
- o Training and education of agency staff whose duties and functions relate to Sections 8 and 15.
- o Conducting outreach, liaison, source listings, and seminars for small and disadvantaged business.

- o Publishing of required information brochures and documents.
- o Interagency liaison of program procurement activities relating to small and disadvantaged business.
- o Oversight of the implementation of Section 223(a) of P.L. 95-507.
 - .. for any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request;
 - (1) a copy of bid sets and specifications with respect to such contract;
 - (2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and
 - (3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

The departments and agencies should report to OFPP within 90 days on the steps taken to implement the provisions of this Policy Letter. This will include (1) the date the Office was established, (2) the name of the Director, (3) organizational chart showing his reporting lines, (4) the extent of his supervisory authority including the number of people he supervises (5) program plans including scope of his duties and responsibilities, and (6) the budget for the Office.



Lester A. Fettig
Administrator



Washington, D.C. 20503

Executive Registry

79-28791

17 MAY 1979

Mr. James D. Currie
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Currie:

The Central Intelligence Agency (CIA) has reviewed OFPP Policy Letter No. 79-1, on implementation of Section 15 (k) of the Small Business Act, as amended: Office of Small and Disadvantaged Business Utilization, dated March 7, 1979.

Largely because of the Director of Central Intelligence's statutory responsibility to protect against the disclosure of intelligence sources and methods — 50 U.S.C.A. 403(d)(3) (Section 102 of the National Security Act of 1947), the CIA has developed unique methods of handling its procurement requirements. In many cases the products delivered under CIA contracts are classified because they involve intelligence collection methods. In many other cases while neither the products nor services delivered are in themselves sensitive, the contractual association between CIA and the contractor must be classified. As an example of the latter, commercially available, off-the-shelf equipment to be utilized in a foreign country can be traced back to CIA through serial numbers, shipping documents, invoices, and maintenance agreements if the contractor were known to be providing equipment to CIA. In order to protect against this, we classify the relationship between the contracting parties.

The necessity for CIA's unique procurement procedures has been accepted by cognizant oversight bodies, has been an established part of our internal regulations since our very beginning, and has been reviewed and accepted by various Congressional committees with a need-to-know. Funding for these types of procurements is considered to be "... for objects of a confidential, extraordinary, or emergency nature" as defined in Section 8(b) of our CIA Act (50 U.S.C.A. 403j). No third party privity is permitted on such transactions.

Because of the statutory authorities and responsibilities levied upon the DCI and the resultant fact that no third party privity is available for CIA procurement actions, CIA has never formally implemented



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Executive Registry

79-6451

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

MAR 7 1979

OPPP POLICY LETTER NO. 79-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Implementation of Section 15(k) of the Small Business Act, as amended: Office of Small and Disadvantaged Business Utilization

On October 24, 1978, President Carter signed P.L. 95-507, amending the Small Business Act and the Small Business Investment Act of 1958. Section 221 of P.L. 95-507 amends Section 15(k) of the Small Business Act, 15 U.S.C. 637, to require that each Federal agency having procurement powers establish an Office to be known as the "Office of Small and Disadvantaged Business Utilization."

The purpose of this Policy Letter is to provide uniform policy guidance to the affected procuring activities on the organization and functions of that Office. Clearly, there will need to be special variations in administrative composition and procedures to accommodate the peculiar organizational arrangements of each agency. Nevertheless, the departments and agencies exercising procurement powers shall observe the following policies in implementing Section 15(k).

1. The primary function of the Office of Small and Disadvantaged Business Utilization shall be to implement and administer the programs under Sections 8 and 15 of the Small Business Act, as amended. Other duties consistent with the Government's small and disadvantaged business programs may be assigned to the Office.
2. The Director shall be a full-time employee whose full-time function will be to supervise the operations of the Office. He shall be responsible only to, and report directly to, the head of the agency or his deputy, i.e., the second ranking person in the agency.
3. The Director shall have supervisory authority over personnel of headquarters and the field of the agency when such personnel are performing duties for which the Office of Small and Disadvantaged Business has responsibility.

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a Small Business Act program. It does not conduct interagency liaison for procurement activities relating to small and disadvantaged business. It has no personnel who have as their sole responsibility the handling of small business matters; it does not conduct outreach, liaison, source listings, or seminars for small business, and does not have an Office of Small and Disadvantaged Business Utilization. While these various assets for execution of procurement from small and disadvantaged businesses are not existent within CIA, I hasten to add that CIA is committed to the spirit of small and disadvantaged business legislation and has many activities in process. Examples include liaison with the Office of Federal Contract Compliance to assure that contractors receiving contracts in excess of \$1 million are in compliance with equal employment opportunity legislation, inclusion in all of our contracts of mandatory contract clauses relating either to small or minority business, distribution to our centralized procurement division of available source lists of minority contractors, and maintenance of records on contracts with small or disadvantaged contractors. In addition to these activities we have participated in various meetings, such as the seminar sponsored by the Joint Economic Committee of the Congress on Measuring Progress in Female and Minority Federal Contracting in 1977.

CIA's total procurement budget (classified) is small as is our complement of procurement personnel. Without the organizational structure required by the aforementioned policy letter, we placed 37 percent of our procurement actions and 26 percent of our procurement dollars with small business in Fiscal Year 1978. We believe this performance compares favorably with other agencies. Our records of contracting with minority business are currently being updated, but I believe the results will not be as favorable in that area as for small business. I have directed that additional effort be devoted to this area.

In conclusion, CIA will continue what I believe is an excellent record of contracting with small business and will strive for increased contract placement with minority business. While I support fully the policies of the Administration on small and disadvantaged business, CIA will not be able to formally implement the portions of P.L. 95-907 discussed in OFPP Policy Letter No. 79-1.

Sincerely,

/s/ Frank C. Carlucci

Frank C. Carlucci

Distribution:

Orig - Adse
1 - DDCI
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79-3849

OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

7 SEP 1979

DD/P Registry

79-2916

Policy Letter 79-3

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Goal Setting

On October 24, 1978, the President signed into law Public Law 95-507 amending the Small Business Act and the Small Business Investment Act of 1958. Section 221 of Public Law 95-507 requires the head of each Federal agency after consultation with the Small Business Administration to establish realistic goals and report their achievement in awarding contracts of \$10,000 or more to small business concerns and to small business concerns owned and controlled by socially and economically disadvantaged individuals.

As provided in P.L. 95-507, the goals shall be jointly established by the Head of the Agency and SBA and whenever they fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination.

The purpose of this Policy Letter is to transmit uniform policy guidance, set out in the attachment issued by the Small Business Administration, for establishing such goals.

This policy is effective immediately. For further information, contact:

Edward Odell, Deputy Director
Office of Procurement and Technical Assistance
Small Business Administration
Washington, DC 20416
(202) 653-6332

James D. Currie
James D. Currie
Acting Administrator



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

SEP 4 1979

OFFICE OF THE ADMINISTRATOR

AUG 31 1979

Mr. James D. Currie
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Currie:

Enclosed herewith is a policy directive to the various Federal agencies responsible for promulgating procurement directives. In accord with discussions between our respective staff personnel [redacted] and in which I understand you participated, the enclosed document, when issued by the Office of Federal Procurement Policy as a directive, will serve to implement Section 221 of Public Law 95-507 which added new subsections to Section 15 of the Small Business Act.

Sincerely,

A. Vernon Weaver
Administrator

Enclosures



GOALS FOR PROCUREMENT AWARDS TO
SMALL AND SMALL DISADVANTAGED BUSINESSES

The head of each Federal agency having procurement powers shall submit to the Administrator of the Small Business Administration by the end of the first quarter of each fiscal year:

- (1) an estimate of the total dollar amount of all prime contracts having a value of \$10,000 or more to be awarded by the close of the current fiscal year;
- (2) a goal for prime contract awards valued at \$10,000 or more to be made to small business concerns during the current fiscal year expressed as a percentage of the estimated total dollar amount of prime contracts to be awarded by the close of the current fiscal year;
- (3) a goal for prime contract awards having a value of \$10,000 or more to be made to the Small Business Administration under the authority of Section 8(a) of the Small Business Act as amended by Public Law 95-507 expressed as a percentage of awards to be made to small business in (2) above;
- (4) a goal for prime contract awards having a value of \$10,000 or more to be made to small concerns owned and controlled by socially and economically disadvantaged individuals under authority other than Section 8(a) of the Small Business Act expressed as a percentage of awards to be made to small business in (2) above;
- (5) The combined goals for prime contract awards in (3) and (4) above expressed as a percentage of the estimated total dollar amount of prime contracts to be awarded by the close of the current fiscal year;
- (6) an estimate of the total dollar amount of the prime contracts to be awarded during the current fiscal year which will require the prime contractor to establish goals for subcontract awards to small business and to small businesses owned and controlled by individuals who are socially and economically disadvantaged;
- (7) a goal for subcontracts to be awarded by prime contractors to small business in order to meet contractually established goals expressed as a percentage of (6) above;
- (8) a goal for subcontracts to be awarded by prime contractors to small businesses owned and controlled by socially and economically disadvantaged individuals in order to meet contractually established goals expressed as a percentage of (6) above; and,
- (9) a brief outline to the methods, processes and data used to

establish the goals in paragraphs (2), (3), (4), (6), (7), and (8) above.

The Administrator of the Small Business Administration shall, within 30 days of receipt of the goals, respond to each agency expressing agreement or indicating reasons for disagreement if interagency consultation fails to resolve differences. Such cases of disagreement shall be submitted by the Administrator of the Small Business Administration to the Administrator of the Office of Federal Procurement Policy for final determination.

REPORTS ON AGENCY ACHIEVEMENTS
AGAINST ESTABLISHED GOALS

A. The head of each Federal agency having procurement powers shall report annually to the Administrator of the Small Business Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of the agency valued at \$10,000 or more. Additionally, such reports shall account for achievements against previously established goals for the awarding by prime contractors of subcontracts against contractually established goals to (1) small business concerns and (2) small business concerns owned and controlled by individuals who are socially and economically disadvantaged. The foregoing reports shall be submitted no later than the end of the first quarter of the fiscal year following the fiscal year being covered by the report. Each report shall indicate:

- (1) the total dollar amount of all prime contracts awarded having a value of \$10,000 or more;
- (2) the percentage of (1) above awarded to small business concerns;
- (3) the percentage of (1) and (2) above awarded to small concerns owned and controlled by socially and economically disadvantaged individuals. This should be broken down to indicate (a) the percentage awarded to the Small Business Administration under the authority of Section 8(a) of the Small Business Act and (b) awarded to small concerns owned by individuals who are socially and economically disadvantaged under authority other than Section 8(a) of the Small Business Act;
- (4) the total dollar amount of prime contracts awarded on contracts requiring the prime contractor to establish contractually covered goals for awarding subcontracts to (a) small business and (b) small businesses owned and controlled by individuals who are socially and economically disadvantaged;
- (5) the percentage of (4) above awarded to small business concerns;

- (6) the percentage of (4) and (5) above awarded to small business concerns owned and controlled by individuals who are socially and economically disadvantaged;
- (7) a comparison of achievements against established goals with explanatory comments concerning the differences.

B. The Administrator of the Small Business Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.